EXECUTIVE MESSAGE.

Pending reading, on motion of Senator Kearby further reading was suspended, and the message ordered printed in the journal.

EXECUTIVE OFFICE,
AUSTIN TEXAS, April 7, 1893.

Gentlemen of the Senate:

Impelled by a sense of duty, I herewith beg to return to your honorable body, with my disapproval thereof, Senate bill No. 91, entitled "An act to validate patents heretofore and hereafter to be issued, and locations heretofore made, by virtue of Confederate veteran donation land certificates," received in the executive office on the 29th day of last month.

In many respects the act is far-reaching; in some it is ambiguous; in others it thwarts the purpose for which it was perhaps intended. As a whole it is certainly unjust, if not unconstitutional, and is detremental to public interests. It is well, therefore, to consider the cause of it, the purpose of its passage, and the effect it may have on the "actual settler" so prominently mentioned in the emergency clause, as well as on the State school fund so deeply involved by its provisions.

On prescribed conditions t e act of April 9, 1881, granted a land certificate of 1280 acres to each person being then a resident of the State, who had been permanently disabled by reason of wounds received while in service on the southern side in the late war. The act expressly provided that as a condition precedent of the right to land by virtue of such certificates, the locator should also have surveyed a like amount of land for the benefit of the permanent sch ol fund.

On the 27th and 28th days of September, 1883, a person "locat d" seventeen of these land certificates of 1280 acres each, which he had gathered up, on a solid body of land embracing an area of 21,760 acres.

Under these "locations" surveys were made and returned to the general land office within the time prescribed by law, but the field notes were not accompanied by the certificates. More than five years elapsed and the certificates were still absent from the land office where the law required them to be returned with the field notes and remain as archives. It seems that the locator withdrew the certificates from the surveyor's office before the field notes were returned to the land office for the purpose (but failed) of locating land of an equal amount under them in another county for the school fund. In doing this it seems that he proposed to locate the school fund quota on what are known as "titled" lands—lands that were claimed under title by others. He attempted to compel the surveyor by mandamus to survey these "titled" lands for the school fund, but the district court decided against him. Consequently, by virtue of these certificates, although the schools were entitled to 21 760 acres, not an acre was set apart for them. Finding a person in possession of the 21,760 acres, which he had in the first instance located for himself, the locator brought action of trespass to try title against the occupant. Judgment was rendered against him in the district court, and he appealed to the supreme court. In a well considered opinion the supreme court held that the locator had no right to this land nor to any part of it, for the reason that he had not also located an equal amount in alternate contiguous surveys for the public free schools, as required by law. (See 80th Texas Sup. Ct. Rep., 249.) So, failing in the courts, this locator-claimant, and others who had disregarded the law, go to the legislature for a validating act, and it is passed. This act now proposes to make good the titles of: First, "all patents heretofore and hereafter to be issued" on these lands by virtue of such certificates; and second, "all locations heretofore made by virtue of legal and valid Confederate veteran donation land certificates" made for the individuals and schools on the vacant, unappropriated and unreserved public domain. Where the lands have not been patented and are not occupied by actual settlers who have improved the same prior to January 1, 1893, the Commissioner of the General Land Office is required by this "validating act" to divide the school and individual sections into two equal parts and to issue to the individual entitled thereto patents to one-half of each of said sections. In doing this the act gives the individual claimant a "preference right for six months after said division is made to purchase the part so alloted to the several school or asylum funds at the price fixed by the board."

It will be noted that, although the patented surveys are as void as the others, no authority is given for dividing them, so as to secure to the school fund its just portion and thus give effect to the original purpose of the Constitution and the law out of which the claim arose. The records of the General Land Office show that by virtue of certificates issued under said act of April 9, 1881, there have been located and surveyed for individuals in solid tracts 1,979,852 acres of land, and for the State school fund, but not in alternate sections, 1,932,565, or 47,287 acres more for individuals by the same certificates than for the school fund. Of these lands there have been patented to individuals 1,430,092 acres, leaving about 549,759 acres yet unpatented to individuals, which are proposed to be divided, giving one-half to the schools if no settlers are on them. Notwithstanding these locators have utterly disregarded the law so as to render their claims void, this act proposes to validate absolutely and unconditionally the patents to 1,430,092 acres in the face of the further fact that in these violations of the law in the first instance, the State school fund was cheated out of 47,287 acres for which the locators, who invoke the doctrine of good faith on the part of the government, are not called upon to make good. The loss to the school fund of this 47,000 acres, though considerable, must be insignificant compared to the advantage of it taken by locators in selecting land for themselves by the methods they adopted in violation of law. They ignored the law and made selections to suit themselves, no doubt leaving to the school fund every gulch, hillside, frog pond and non-productive acre possible to find and throw off on it. The supreme court, in the case referred to, properly adverted to this advantage exercised by the locator to the detriment of the public schools, in the following language:

"It never was contemplated, as contended by appellant, that the owner of such a certificate might for himself select lands in one locality, and locate in some other part of the State lands for the school fund. Under a law permitting such a course, with no restraint on the owner of such certificates, it would be contrary to the experience of mankind when good, unappropriated lands become scarce, to expect that selfish promptings would not induce the holders of such certificates to locate for themselves first the best lands they could to the extent of their interests in the certificates, and then for the school fund such as might be found in the same locality, or in some other part of the State where a sufficient area of vacant land might be found, even though this was in some worthless mountain range, or on lands for some other reason practically worthless."

The cause that produced the necessity for this validating act began and ended with indifference to the law granting the certificates and the apparent desire of the locators to pick for themselves the best lands, regardless of the interest of the school fund. The purpose of the validation is to condone their wrongs and to give them recompense instead of to demand of them justice. The example is wrong; the effect mischievous. To those who knew in the first instance they were wrong, and for which reason they were perhaps quickened into taking out patents, this act grants full immunity by validating their titles, although the school fund doubtless suffered greatly by their invidious discriminations in selecting for themselves the best lands. Of those who had equal rights, and had committed no greater wrongs than others, but failed to procure patents perhaps for the reason that they had faith in their titles and may have in all respects acted fairly, this law demands an equal division in behalf of the school fund. Thus a discrimination is apparent.

Another feature of this act deserves attention. It validates all "locations" made by virtue of the certificates named. So that the man who located the 21,670 acres will get his division, notwithstanding he violated the Constitution and laws, and completely ignored the school fund. He failed to locate any lands for the schools. He failed to return his certificates with the field notes to the land office within one year from the date of survey as required by law. He failed to have his certificates surveyed and returned to the land office within five years from their date as required by the Constitution, and lost all rights for that dereliction. It is true he attempted to "locate" land in another county for the school fund, but the surveyor refused and the court sustained him, on the ground that they were appropriated or titled lands not subject to lo-

cation. Had this surveyor, through ignorance or corruption, "located" these titled lands for the public schools, the State would have been quite as well off as she is now so for as this claimant's action is concerned. He took care to locate for himself a solid body of over twenty thousand acres; but in the face of a plain law that required him to have surveyed an equal amount for the school fund, he failed to give it an acre. In common with others, in but little if any more favorable light than himself, he asks the Legislature to validate his pretended claims and it is done. It would seem, from the emergency clause of the act, that the Legislature did so for the reasons, first, that the Commissioner of the General Land Office held that the act granting the certificates did not require the surveys to be adjacent or contiguous; second, that a large portion of said lands are now owned and in possession of "actual settlers," who are liable to lose their lands; third, that it is the duty of the State to prevent litigation and disturbance of her citizens and their land titles as far as possible.

To these reasons it may be answered: That when equity or vested rights in land titles depend on a misconstruction of law, a premium will be the reward for ignorance of law. All the heads of departments have a legal adviser in the Attorney General, who is required by law, when so requested, to give any such State officer advice in writing upon any question touching public interests. Should it appear that the Attorney-General or a court has given to the law the interpretation imputed to the Land Commissioner, then some excuse would exist for the claim of good faith in the locators by which they propose to bind the State, but not then to the extent of this act. So far as "actual settlers" having their titles disturbed, it may be said that they can about as well stand the disturbance as the speculators who are not mentioned in the act. Analyze the first section of the act, and it will be seen that special advantage is given the individual who claims the land. It gives to him the part which the law proposes to allot by division to the school fund "a preference right for six months after said division is made to purchase it at the price fixed by the board." What board? What price? Preference right for six months! The man that "located" the 21,000 acres in a solid body in violation of law, without giving the school fund a foot, can, within six months, come in under this clause, pay the price fixed by the board, whatever that is, and get what he is not now, and never was, entitled to—this large tract of land. Had he complied with the law, the extent of his right would have been a title to each alternate section of this large tract. The school portion could not have been purchased by him at any price, for the law reserves it for actual settlers in good faith. As he failed to comply with law, this validating act vests title in him to each alternate section, and gives him a preference right for six months to buy up the school portion at an indefinite, uncertain price fixed by a board long since defunct; and thus own in a solid body this vast domain—sufficient territory for a hundred homes for "actual settlers." What he could not do by authority of law he accomplishes by violation of law. This may appear paradoxical, but it is true in the light of this validating act. What is said of this locator applies no doubt to many others similarly situated, whose solicitude for the "actual settler" is commendable, but whose claims have neither equity nor law to support them.

To allay all anxiety manifested in the actual settler, it is but necessary to consider his condition under the law. All the land in question belongs to the State, and her policy has been and doubtless will continue to be to sell it on long time and easy terms to the actual settler. If he has purchased any of this land from the State, and has paid for it, there will be no difficulty in quieting the title in him without giving large bodies of land away to those who acted in bad faith and in violation of law in locating it. If he has not paid for it, he can easily purchase it from the State and get a good title. Equity rests not in a violation of the law. Vested rights can not depend on wrong. The State is under no moral nor legal obligation to "quiet titles" in those who have, in the pursuit of greed, ignored both law and justice. The State holds the public domain in trust for the people—one-half of it for the public free schools; and in guarding this estate, she acts best when she acts right. Law and equity, not magnanimity and sentiment, should control her in its disposition.

Very respectfully,

J. S. HOGG,
Governor of Texas.